

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 25/2, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Mohammed al-Otaibi**, a Saudi national who might be at imminent risk of deportation from Qatar to the Kingdom of Saudi Arabia, in violation of the non-refoulement principle. If deported, Mr. Mohammed al-Otaibi risks facing the danger of torture, enforced disappearance, arbitrary detention and unfair trial.

Mr. Mohammed al-Otaibi, born on 29 August 1968 in the Kingdom of Saudi Arabia, is a human rights activist and founder of "al-Itihad organization for Human Rights".

Al-Itihad organization for Human Rights is a non-governmental organization whose goal is to promote human rights in the Kingdom of Saudi Arabia by protecting other human rights organizations and focusing on the empowerment of women in society, as well as on the abolishment of the death penalty.

Mr. al-Otaibi was the subject of two previous communications to the Kingdom of Saudi Arabia: sent on 1 July 2013, reference A/HRC/25/74, case no. SAU 6/2013 and on 13 December 2016, case no. SAU 8/2016, in relation to alleged human rights violations against him linked to his human rights activities.

According to the information received:

In February 2017, a travel ban inflicted on Mr. al-Otaibi as part of a previous sentence, was lifted. Mr. al-Otaibi fled the Kingdom of Saudi Arabia on 3 March 2017 to request political asylum status in Qatar using his national ID card which

permits him to cross the Gulf States. He travelled without a passport which had been confiscated by Saudi authorities

The police of the Kingdom of Saudi Arabia, known as al-Mabahith, have tried to contact Mr. al-Otaibi, inquiring about his whereabouts. Following his travel to Qatar, the Mabahith reportedly called Mr. al-Otaibi on his Saudi number several times to threaten him. A hearing in absentia by a Saudi court was held on 25 April 2017 and a final hearing is expected for 21 May 2017.

In light of previous criminal proceedings against Mr. al-Otaibi in the Kingdom of Saudi Arabia, if deported back, Mr. al-Otaibi would face an imminent risk of being subject to arbitrary arrest, enforced disappearance, torture and unfair trial, and would be tried under the anti-terrorist law.

A summary of these proceedings in Saudi Arabia is the following: On 1 January 2009, Mr. al-Otaibi was arrested by Saudi authorities with other activists after helping to organize a demonstration in protest of Israel's 'Operation Cast Lead' military campaign against the Gaza Strip. On 15 May 2011, he was convicted in the Kingdom of Saudi Arabia and sentenced to three years in prison to be followed by a five-year travel ban.

During a total of three and a half years of incarceration, Mr. al-Otaibi has faced ill-treatment, including medical negligence, verbal abuse and poor conditions of detention.

After his release, Mr. al-Otaibi has been under investigations for activities related to his organization, al-Itihad organization for Human Rights and for talking to the media as well as writing on social media. In early May 2014, he was made to sign a pledge to refrain from talking to the media and to stop writing on social media.

On 30 October 2016, he was brought to trial in front of the Specialized Criminal Court in Riyadh. The allegation against Mr. al-Otaibi referred to a list of charges dating back to 2013, including "participating in setting up an organization and announcing it before getting an authorization", "dividing national unity, spreading chaos and inciting public opinion by preparing, drafting and publishing statements that are harmful to the reputation of the Kingdom and its judicial and security institutions", "publishing information about their interrogations despite signing pledges to refrain from doing so".

Mr. al-Otaibi was also accused of "publishing and retweeting tweets that are offensive to the Kingdom, the ruler and Arab countries", "inciting international organizations against the Kingdom", "adopting the constitutional monarchy project", "participating in two media interviews" and "inciting people to protest".

Mr. al-Otaibi was additionally accused of breaching his pledge by, among other activities, attending meetings in support of another NGO forced to shut down in 2013, and signing statements in support of its founding members who have all been sentenced to prison; participating in two media interviews where he discussed human rights related issues; drafting reports on issues such as the harassment of the Kingdom of Saudi Arabian human rights activists.

We are concerned at the high risk of torture, arbitrary arrest, enforced disappearance and unfair trial faced by Mr. al-Otaibi due to his activities as a human rights defender, if he is to be deported to the Kingdom of Saudi Arabia.

While we do not wish to prejudge the accuracy of these allegations, we would like to underline that the decision to deport Mr. al-Otaibi to the Kingdom of Saudi Arabia would appear to be in contravention of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment and in particular, the non-refoulement principle.

We would, especially, like to refer your Excellency's Government to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Qatar on 11 January 2000, which provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. We would like to recall that non-refoulement under CAT must be assessed independently of refugee or asylum-seeker status determinations.

We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement."

Moreover, we would like to refer to articles 19 and 20 of the Universal Declaration of Human Rights, enshrining the rights to freedom of expression and the right to freedom of association, respectively. We would also like to refer to article 28 of the Arab Charter, ratified by Qatar on 11 January 2009, protecting the rights to freedom of assembly and association.

Lastly, we would like to draw the attention of your Excellency's Government to the Declaration on the Right and Responsibility of Individuals Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which establishes everyone's right to promote and to strive for the protection and realization of human rights as well as the responsibility and duty of States to protect, promote and implement all human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Mohammed al-Otaibi in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the current legal status of Mr. Mohammed al-Otaibi regarding his application for asylum.
3. Please provide information on the measures taken to protect the life, and the physical and psychological integrity of Mr. Mohammed al-Otaibi, and in particular on the measures considered to prevent his deportation or transfer to a place where his life, personal security and integrity may be at risk.
4. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the repatriation of foreign nationals, including from the Kingdom of Saudi Arabia.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no

way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
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